

**REPORT ON
CLERK OF THE CIRCUIT COURT
of the
CITY OF PETERSBURG, VIRGINIA
BENJAMIN O. SCOTT**

**FOR THE PERIOD
APRIL 1, 2004 THROUGH MARCH 31, 2005**



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Commonwealth of Virginia

Walter J. Kucharski, Auditor

**Auditor of Public Accounts
P.O. Box 1295
Richmond, Virginia 23218**

October 5, 2005

The Honorable Benjamin O. Scott
Clerk of the Circuit Court
City of Petersburg

City Council
City of Petersburg

We have audited the cash receipts and disbursements of the Clerk of the Circuit Court of the City of Petersburg for the period April 1, 2004 through March 31, 2005.

Our primary objectives were to test the accuracy of financial transactions recorded on the Court's financial management system; evaluate the Court's internal controls; and test its compliance with significant state laws, regulations, and policies. However, our audit was more limited than would be necessary to provide assurance on the internal controls or on overall compliance with applicable laws, regulations, and policies.

Court management has responsibility for establishing and maintaining internal controls and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

Our audit was more limited than would be necessary to provide assurance on internal controls or to provide an opinion on overall compliance with laws and regulations. Because of inherent limitations in internal controls, errors, irregularities, or noncompliance may nevertheless occur and not be detected. Also, projecting the evaluation of internal controls to future periods is subject to the risk that the controls may become inadequate because of changes in conditions or that the effectiveness of the design and operation of controls may deteriorate.

The results of our tests found the Court properly stated, in all material respects, the amounts recorded and reported in the financial management system.

However, we noted certain matters involving internal control and its operation that we consider to be reportable conditions. A reportable condition involves a matter coming to our attention relating to a deficiency in the design or operation of internal controls that, in our judgment, could reasonably lead to the loss of revenues or assets, or otherwise compromise fiscal accountability. The reportable conditions are discussed in the section titled "Internal Control and Compliance Findings and Auditor's Recommendations."

We do not believe these conditions are material weaknesses. A material weakness is a significant deficiency in the design or operation of internal controls that, in our judgment, could reasonably lead to the loss of revenues or assets, or otherwise compromise fiscal accountability and go undetected.

The results of our tests of compliance with applicable laws and regulations disclosed no instances of noncompliance that are required to be reported.

We discussed these comments with the Clerk and Judge Baskervill on October 5, 2005 and we acknowledge the cooperation extended to us by the Court during this engagement.

AUDITOR OF PUBLIC ACCOUNTS

WJK:cam

cc: The Honorable Thomas V. Warren, Chief Judge
The Honorable Pamela S. Baskervill, Judge
B. David Canada, City Manager
Bruce Haynes, Executive Secretary
Compensation Board
Paul Delosh, Director of Technical Assistance
Supreme Court of Virginia
Martin Watts, Court Analyst
Supreme Court of Virginia
Director, Admin and Public Records
Department of Accounts

INTERNAL CONTROL AND COMPLIANCE FINDINGS AND AUDITOR'S RECOMMENDATIONS

The following findings are reportable internal control matters that could lead to the loss of revenues, assets, or otherwise compromise the Clerk's fiscal accountability. The Clerk's response and written corrective action plan to remediate these findings are included as an enclosure to this report.

Improve Trust Fund Management

The Chief Judge needs to determine the extent of the Clerk's liability for lost interest income in accordance with Section 58.1-3177 of the Code of Virginia for not properly investing funds. As noted in the three previous audits, the Clerk failed to invest funds timely. We found that the Clerk failed to invest a total of \$147,882 within 60 days of receipt as required by Section 8.01-600(F) of the Code of Virginia. We found other delays of up to an additional 90 days before investing funds in 6 of 16 new trust fund accounts tested. Although the Clerk has reimbursed lost interest in two of the six accounts, he has not yet done so for the remaining four accounts.

Other ongoing internal control problems include the Clerk not consistently reconciling trust fund balances from the bank statements to the court's accounting system. There was a variance of over \$6,100 between the bank statement and the system balance that the Clerk failed to resolve. We determined that the variance resulted from some trust funds accounts overstated by approximately \$90 and to one account totaling \$6,243 that the Clerk had disbursed in February, but still had failed to close the account as of June 2005.

As a result, the Annual Report contains inaccurate financial information, including incorrect trust fund balances and approximate distribution dates. Without proper management and an adequate reconciliation process, the Clerk cannot ensure proper reporting and payout of trust fund accounts.

The Chief Judge needs to determine if the Clerk and his staff can properly maintain trust accounts in accordance with the statute, or whether it is necessary to remove these and future accounts from the Clerk and appoint a General Receiver to manage the Court's trust funds. If the Chief Judge decides to leave the court trust funds with the Clerk, he should institute a process to periodically review the Clerk's management of these funds. This process may need to involve the Technical Assistance Unit of the Supreme Court to determine if the Clerk is meeting his statutory duties.

Provide Proper Oversight

The last four audits found the Clerk does not provide oversight or supervisory review over daily operations. Lack of oversight and review has become a critical issue since the office has had significant staff turnover during the audit period. Inadequate supervisory review resulted in errors and omissions in many areas of court operations going undetected and uncorrected. Specifically, we found the following errors.

- Staff do not properly assess fees, fines, and restitution as required by the Code of Virginia. We found assessment errors totaling \$8,101 in 12 of 40 criminal cases tested. Staff incorrectly assessed a wide range of fees and fines including felony and misdemeanor fixed fees, DUI conviction fees, district court appeal fees, DNA testing fees, jury costs, public defender and court appointed attorney fees, local jail admission fees, and lastly, state and local fines.

- Staff alter payment fine and fee payment due dates without appropriate documentation. In 9 of 40 criminal cases tested, court staff failed to properly document due date changes or payment terms when recording individual accounts receivable in the automated system. All fines and costs are payable immediately upon final case disposition, unless otherwise ordered by the Court or evidenced by a written payment plan. When court staff alter due dates from established or revised payment agreements without defendants understanding their obligations to the Court, the fines and cost can go uncollected.
- Staff do not consistently monitor the daily and month end automated financial system reports. We found Staff failed to assess criminal revocation fees totaling \$266 in two accounts, five criminal cases not assessed fees until up to two months after sentencing, and a credit balance error not corrected until six months after it occurred. The automated system had reports that showed all of these omissions, however, because the Clerk did not ensure staff review daily and month end system reports the error went uncorrected.
- Staff do not properly review liability accounts. In four of six criminal and civil bonds tested, the Court continued to hold up to 11 months \$1,400 in bonds that required either disbursement or forfeiture. In five of six restitution accounts reviewed, the office continued to hold for up to two years \$1,008 that Staff should disburse or escheat. Also, Staff continued to hold \$5,187 in unclaimed chancery funds eligible for escheatment to the Commonwealth.

The Clerk has ultimate responsibility for the office's daily operations. He should ensure that Staff possess an appropriate understanding of the court's automated systems and appropriate accounting and office procedures. Although high staff turnover contributes to the problem in the Court, these problems predate the turnover. To reduce errors, the Clerk must provide appropriate training to new employees as soon as possible. Once Staff have obtained the appropriate level of knowledge to accurately perform assigned duties, as we recommended in past audits, the Clerk should review staff work on a daily basis to ensure that employees are adhering to accepted accounting practices, are performing their work properly and timely, and are regularly resolving all exceptions.

PETERSBURG CIRCUIT COURT CLERK'S OFFICE
CORRECTIVE ACTION PLAN
OCTOBER 5, 2005

To: **Mr. James Shepard, CPA**
 Audit Director, APA

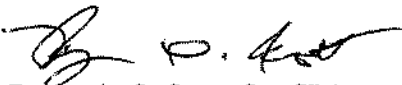
Trust Funds

The Clerk has requested that the court enter an order appointing a general receiver, effective January 1, 2006. The items reported in the APA audit would be resolved by appointing a general receiver to manage the court's trust funds. Pursuant to the completion of a financial review by APA, any remaining outstanding issues would be resolved at that time.

Criminal Division Receivables and Assessments of Fines and Costs

The Clerk and the Office of Executive Secretary of the Virginia Supreme Court have developed and implemented a staff-training program for the Clerk's Office and the Court. Additional training has been and will continue to be an ongoing process. In addition, The State Auditor of Public Accounts has agreed to make his staff available, during the fiscal year, for input and program refinement. Although the staff is a new staff, the additional training should correct the assessment problems noted during the audit.

Respectfully Submitted



Benjamin O. Scott, Sr., CPA
Clerk of the Petersburg Circuit Court
October 5, 2005

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